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OFFICE OF PETITIONS

In re Patent No. 7,799,535
Issued: September 21, 2010
Application No. 09/207,649
Filed: December 8, 1998
Attorney Docket No. **17481-0004001**

:DECISION ON REQUEST
:FOR RECONSIDERATION OF
PATENT TERM ADJUSTMENT
:AND
:NOTICE OF INTENT TO ISSUE
:CERTIFICATE OF CORRECTION

This is a decision on the RESPONSE TO DECISION ON REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT filed January 14, 2011, requesting that the patent term adjustment determination under 35 U.S.C. § 154(b) be changed from 117 days to 159 days.

The application for patent term adjustment is **GRANTED**.

On September 21, 2010, the above-identified application matured into U.S. Patent No. 7,799,535 with a revised patent term adjustment of 117 days. On November 22, 2010, patentees timely submitted an application for patent term adjustment (with required fee), asserting that the correct number of days of Patent Term Adjustment is 159 days. The reduction in question, after the mailing of the Notice of Allowance was an OATH OR DECLARATION. Patentee disputed the reduction of 42 days for applicant delay and argued that Patentee complied with the Examiner's request and submitted the requested courtesy copy of the originally filed oath or declaration, missing from the Office's file (though it had been submitted in a timely manner during prosecution of the application). Therefore, Patentee respectfully submitted that the post-allowance submission should not be considered a failure to engage in reasonable efforts to conclude prosecution of the application as outlined in 37 C.F.R. § 1.704(c)(10).

The reduction of 42 days has been found to be incorrect. A review of the application file reveals that, as stated by applicants, their response to the Notice to File Missing Parts of Application mailed January 25, 1999, was filed March 24, 1999. While a review of the application file does not reveal that the oath or declaration purportedly filed March 24, 2009 was received, the postcard receipt with a PTO date stamp is prima

facie evidence of receipt of the oath or declaration on March 24, 2009, prior to the mailing of the Notice of Allowance and Notice of Allowability on May 12, 2010.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is one hundred fifty-nine (159) days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e) with the previously filed petition on November 22, 2010. No additional fees are required.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The certificate of correction will indicate that the term of the above-identified patent is extended or adjusted by ONE HUNDRED FIFTY-NINE (159) days.

Telephone inquiries specific to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.



Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

DRAFT
UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,799,535 B1
DATED : September 21, 2010
INVENTOR(S) : Susan Lindquist

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (117) days

Delete the phrase "by 117 days" and insert -- by 159 days--